

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Kiera L. Decker

Debtor(s).

Case No. Bky 04-34573-DDO
Chapter 7 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Kiera L. Decker, 619 Lodge Drive, Jordan, Minnesota 55352, Debtor and their attorney, Robert J. Hoglund, Esq., P.O. Box 130938, Roseville, MN 55113, and other entities specified in Local Rule 9013-3.

1. Affinity Plus, of 2730 Snelling Ave N, Saint Paul, MN 55113, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this matter at 9:30 a.m., on Wednesday, September 8, 2004 in Courtroom No. 228 A, at the United States Courthouse, at 316 N. Robert St., in St. Paul, MN 55101.

3. Any response to this motion must be filed and delivered not later than Friday, September 3, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and Holidays), or filed and served by mail not later than Monday, August 30, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and Holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on August 5, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3 and 9006-1. Movant requests relief with respect to: 2002 Ford F150, Serial #1FTRW08L32KC40428.

6. Movant has a valid and perfected first security interest in the following collateral to secure the purchase price thereof: 2002 Ford F150, Serial #1FTRW08L32KC40428.

7. A copy of the Retail Installment Contract whereby Debtor granted Movant a security interest in the aforesaid collateral is attached hereto as Exhibit A.

8. Movant has duly perfected its security interest in the aforesaid collateral as reflected on the Confirmation of Lien Perfection, a true and correct copy of which is attached hereto as Exhibit B.

9. The NADA retail value of the collateral at the time of the filing of the petition was \$23,975.00 while the amount of Movant's claim was \$27,369.88. The debtor is delinquent One Thousand Eight Hundred Fifty Six and 91/100 Dollars, (\$1,856.91) for the monthly installments due on June 18, 2004 through August 18, 2004 .

10. Movant does not have, and has not been offered, adequate protection of its interest in the above collateral, Debtor has no equity in the collateral, and the above collateral is not necessary for an effective reorganization.

11. A separate memorandum of facts and law is submitted with the motion.

WHEREFORE, Affinity Plus by its undersigned attorney, moves the Court for an order or judgment that the automatic stay provided by 11 U.S.C. §362(a) be modified so as to permit Affinity Plus to foreclose its security interest in the above collateral, and for such other relief as may be just and equitable.

Dated: August 19, 2004

MESSERLI & KRAMER, P.A.


By: 

William C. Hicks, #142505
Derrick N. Weber, #241623
Atty for Affinity Plus
3033 Campus Drive
Suite 250
Plymouth, Minnesota 55441
Telephone (763) 548-7900

VERIFICATION

I, Jodi Schramel, corporate representative of the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 8/17/04


Jodi Schramel

Local Rule Reference: 9013-2

k7.dtm

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

No. _____
Date 04/03/2002

Seller

AMERICAN FORD
4801 WEST 80TH STREET
BLOOMINGTON, MN 55437

"We" and "us" mean the Seller above, its
successors and assigns.

Buyer

KIERA LEIGH DECKER

619 LODGE DRIVE
JORDAN, MN 55352

"You" and "your" mean each Buyer above, an
guarantor, jointly and individually.

SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the us accessories and attachments.

Description of Motor Vehicle Purchased Year Make Model VIN Lic. No./Year
2002 FORD F150 PICKUP 1FTRW08L32KC40428 XX
Other: None

Description of Trade-In N/A

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 36459.77 plus finance charges accruing on the unpaid balance at the rate of 6.7500% per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

LOAN ADMINISTRATION FEE: You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
<u>6.75%</u>	<u>\$ 8106.07</u>	<u>\$ 36459.77</u>	<u>\$ 44565.84</u>	<u>\$ 7798.00</u> <u>\$ 52363.84</u>

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
<u>72</u>	<u>618.97</u>	<u>MONTHLY BEGINNING 05/18/2002</u>

Security: You are giving a security interest in the Motor Vehicle purchased.

Late Charge: If a payment is more than 15 days late, you will be charged \$15.00

amount allowed by law under Minn. Stat. § 47.59.

☐ This amount may increase so as to always be the highest

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured ☐ Single ☐ Joint Prom. \$ N/A Term N/A

Credit Disability: Insured ☐ Single ☐ Joint Prom. \$ N/A Term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined.

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 2499.77) \$ 43680.77
Service Contract, Paid to: N/A
Cash Price \$ 43680.77
Manufacturer's Rebate \$ 2500.00
Cash Down Payment \$ 5298.00
Deferred Down Payment \$ N/A
a. Total Cash/Rebate Down \$ 7798.00
b. Trade-In Allowance \$ N/A
c. Less: Amount owing \$ N/A
Paid to: None
d. Net Trade-In (b. minus c.) \$ N/A
e. Net Cash/Trade-In (a. plus d.) \$ 7798.00
Down Payment (e. plus cash down payment) \$ 13078.00

72 618.97 MONTHLY BEGINNING 05/18/2002

Security: You are giving a security interest in the Motor Vehicle purchased.

☐ **Late Charge:** If a payment is more than 15 days late, you will be charged \$15.00

amount allowed by law under Minn. Stat. § 47.59. ☐ This amount may increase so as to always be the highest

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured

☐ Single ☐ Joint Prem. \$ N/A Term N/A

Credit Disability: Insured

☐ Single ☐ Joint Prem. \$ N/A Term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer d/o/b Buyer d/o/b

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you get insurance from or through us you will pay \$ N/A for of coverage.

This premium is calculated as follows:

☐ \$ N/A Deductible, Collision Coverage \$ N/A

☐ \$ N/A Deductible, Comprehensive Cov. \$ N/A

☐ Fire-Theft and Combined Additional Coverage \$ N/A

☐ \$ N/A

Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

☐ **MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover

This Service Contract will be in effect for

ASSIGNMENT: This Contract and Security Agreement is assigned to

The Assignor AMERICAN FORD This assignment is made 04/03/2002

☐ under the terms of a separate agreement. ☒ under the terms of the ASSIGNMENT BY SELLER on page 2 ☐ This assignment is made with recourse

Seller: By Date 4/18/02

MINNESOTA RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

EXP-111 © 1982, 1995 Bankers Systems, Inc., St. Cloud, MN Form HS-SI MV-MN 10/05/001

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 2499.77) \$ 43680.77

Service Contract, Paid to: \$ N/A

Cash Price \$ 43680.77

Manufacturer's Rebate \$ 2500.00

Cash Down Payment \$ 5298.00

Deferred Down Payment \$ N/A

a. Total Cash/Rebate Down \$ 7798.00

b. Trade-In Allowance \$ N/A

c. Less: Amount owing \$ N/A

Paid to:

d. Net Trade-In (b. minus c.) \$ N/A

e. Net Cash/Trade-In (a. plus d.) \$ 7798.00

Down Payment (e.; disclose as \$0 if negative) \$ 7798.00

Unpaid Balance of Cash Price \$ 35882.77

Paid to Public Officials - Filing Fees \$ 566.50

Insurance Premiums* \$ N/A

Amount to Finance line e. (if e. is negative) \$ 0.00

To: \$ N/A

To: \$ N/A

To: S.P.V. DEPUTY FILING FEE \$ 10.50

To: \$ N/A

Total Other Charges/Amounts Pd. to Others \$ 577.00

Less: Prepaid Finance Charges \$ N/A

Amount Financed \$ 36459.77

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: 04/03/2002

Signature Date

Signature Date

Seller: By (page 1 of 2)

MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST. ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

DECKER KIERA LEIGH
619 LODGE DR
JORDAN MN 55352

02 Year	FORD Make	CWCOF Model	Z1260P151 Title NR.
1FTRW08L32KC40428 VIN		04/03/02 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

952891 L5

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

*

JDU191

1ST SECURED PARTY

LIEN HOLDER

AFFINITY PLUS FEDERAL CU
175 W LAFAYETTE RD 2 FL
SAINT PAUL MN 55107-1400

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Re: Kiera L. Decker

Case No. Bky 04-34573-DDO
Chapter 7 Case

Debtor(s).

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

Affinity Plus moves the Court for an order modifying the automatic stay to permit Affinity Plus to take possession of a 2002 Ford F150 presently in Debtor's possession. Movant has a security interest in the collateral pursuant to a Retail Installment Contract dated April 3, 2002, between Debtor and American Ford, whose interest was subsequently assigned to Affinity Plus. Movant's perfected security interest in the collateral is evidenced on the Confirmation of Lien Perfection for the vehicle.

The NADA retail value of the collateral at the time of the filing of the petition was \$23,975.00 while the amount of Movant's claim was \$27,369.88. The Debtor is delinquent One Thousand Eight Hundred Fifty Six and 91/100 Dollars, (\$1,856.91) to the Movant.

Pursuant to 11 U.S.C. §362(d)(1), relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in collateral of such creditor." Debtor has defaulted on payments due under the Retail Installment Contract. Debtor has failed to provide Affinity Plus with adequate protection for its interest in the collateral. This failure constitutes cause within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the stay.

In addition, pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate where debtors have no equity in the collateral and the collateral is not necessary for an effective reorganization. In this case, the balance due Affinity Plus exceeds the estimated value

of the collateral, and therefore, no equity exists in the collateral. Debtors do not need this collateral for an effective reorganization.

In conclusion, Affinity Plus is entitled to an Order modifying the automatic stay and allowing it to pursue its state court remedies for cause, as defined under 11 U.S.C. §362(d), and due to the lack of equity in the collateral and the fact that the collateral is not necessary for Debtor's effective reorganization. Movant does not have adequate protection for its security interest and none has been offered.

Affinity Plus respectfully requests that the above-named Court modify the automatic stay to allow Movant to pursue its remedies pursuant to state law in regard to this collateral to protect its interest in the collateral.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), Affinity Plus requests that this Order shall be effective immediately.

Dated: August 19, 2004

MESSERLI & KRAMER, P.A.

By: 

William C. Hicks, #142505
Derrick N. Weber, #241623
3033 Campus Drive
Suite 250
Plymouth, Minnesota 55441
Telephone (763) 548-7900

04-52461-0

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Ryan Leddy, of the City of Minneapolis, County of Hennepin, in the State of Minnesota,
declares under penalty of perjury that on 8/19/04, he served by U.S. mail the following
documents:

1. Notice of Hearing and Motion for Relief from Stay;
2. Memorandum in Support of Motion for Relief from Stay; and
3. proposed Order to:

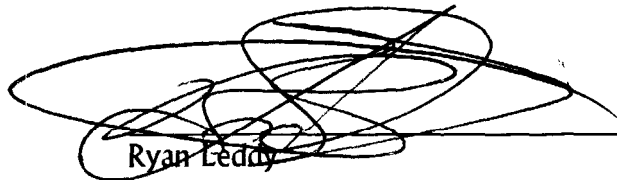
United States Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis MN 55415

Trustee
Patti J. Sullivan
PO Box 16406
St. Paul, MN 55116

Robert J. Hoglund, Esq.
P.O. Box 130938
Roseville, MN 55113

Kiera L. Decker
619 Lodge Drive
Jordan, Minnesota 55352

by depositing and mailing to them true and correct copies.


Ryan Leddy

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Kiera L. Decker

Case No. Bky 04-34573-DDO
Chapter 7 Case

Debtor(s).

ORDER

This matter is before the Court on Affinity Plus's Motion for Relief from Stay. The Motion came on for hearing on Wednesday, September 8, 2004 at 9:30 a.m., at St. Paul, MN. Appearances are as noted in the record.

Affinity Plus requested relief from the automatic stay to foreclose its security interest in a 2002 Ford F150, Serial #1FTRW08L32KC40428. Movant holds a duly perfected security interest in the collateral. The Court being advised fully in the Premises, and upon the Affidavit and all files and records herein,

NOW ORDERS:

That the Automatic Stay provided by 11 U.S.C. §362(a) be modified so as to permit Affinity Plus to foreclose its security interest in the above collateral, in accordance with state law. Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), this Order is effective immediately.

Dated: _____

BY THE COURT:

United States Bankruptcy Judge